

Judicial Inquiry Commission

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October 19, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge is disqualified from hearing a certain case under the Canons of Judicial Ethics. Intervenors in the case are represented by an attorney who is counsel to the plaintiffs in a pending class action concerning judicial salary supplements. You and the other judges in your circuit filed a statement in the class action detailing your opposition to the suit and disagreement with the factual and legal positions of the plaintiffs. You and the other judges in your circuit also provided an affidavit to an attorney for some of the judges who formally intervened as parties opponent to the plaintiffs, and the intervenors subsequently filed this affidavit as part of their evidentiary submission in the case. You also state that you and the other judges in your circuit have had various communications with counsel for the intervening judges and/or various colleagues and formal intervenors concerning your community of interest with the intervenors and litigation strategy.

The Commission has rendered prior advisory opinions holding that a judge who is a named party, a named class representative, an intervenor, or a monetary contributor to litigation expenses in the class action at issue is disqualified from sitting in any proceeding in which a party is represented by counsel for the plaintiff class or a lawyer in the firm of counsel for the plaintiffs. Advisory Opinions 95-581, 95-582, and 96-597. In Advisory Opinion 95-584, the Commission similarly held that a judge who seeks to contest the attempt to declare the salary supplements in question unconstitutional is disqualified from hearing unrelated cases where a party is represented by an attorney for the plaintiffs in the class action or a member of that attorney's firm. These opinions were reached in consideration of the provision in Canon 3C(1) that a judge should disqualify himself in a proceeding in which "his impartiality might reasonably be questioned." The Commission found that the above-described personal involvement in the matter in controversy in the class action constituted circumstances under

which the judges' impartiality might reasonably be questioned in an unrelated suit.

In Advisory Opinion 95-582, the Commission noted that other personal involvement by a judge in the referenced class action might also cause disqualification in unrelated suits in which a party was represented by the lawyer representing the plaintiff class, or by another member of his firm. It is the opinion of the Commission that the circumstances which you have described do constitute a level of other personal involvement by the judges in your circuit so as to disqualify you from hearing such an unrelated suit.

Yours truly,

JUDICIAL INQUIRY COMMISSION